

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी” चण्डीगढ़  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, ‘B’ CHANDIGARH**

**BEFORE SHRI N.K.SAINI, VICE PRESIDENT  
& SHRI RAJPAL YADAV, VICE PRESIDENT**

आयकर अपील सं./ITA No. 1494/CHD/2019

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. Sushma Bansal, H.No. 1708, Phase-3B2, Mohali.	Vs. बनाम	The DCIT, Circle 6(1), Mohali..
स्थायीलेखासं./PAN NO: AGWPB7593B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Akshun Gupta, CA

राजस्व की ओर से/ Revenue by : Shri Ashok Kumar Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 19.11.2020

उद्घोषणा की तारीख/Date of Pronouncement : 19.11.2020

**आदेश/Order**

**PER RAJPAL YADAV, VP**

The assessee is in appeal before the Tribunal against the order of the ld. CIT(A) dated 04.10.2019 passed for assessment year 2012-13.

2. The solitary grievance of the assessee is that ld. CIT(A) has erred in confirming the addition of Rs. 307230/- out of total addition of Rs. 31,98,948/- which was added by the AO with the aid of Section 2(22)(e) of the Income Tax Act.

3. The brief facts of the case are that assessee has filed her return of income on 19.07.2012 declaring a taxable income of Rs. 23,20,000/-. This return was processed u/s 143(1) of the

Income Tax Act. Thereafter, ld. AO has issued a notice u/s 148 of the Income Tax Act to reopen the assessment. The case of the AO is that assessee has shareholding of 15.46% of M/s Saraswati Agro Chemicals (India) Pvt. Ltd. She had received an advance of Rs. 31,98,948/- from M/s Saraswati Agro Chemicals (India) Pvt. Ltd. Since the shareholding of the assessee was more than 10%, therefore, in the opinion of the AO, this advance deserves to be treated as deemed dividend in the hands of the assessee within the meaning of Section 2(22)(e) of the Act. The ld. AO, accordingly, made an addition of Rs. 31,98,948/-.

4. Dis-satisfied with the addition, the assessee carried the matter in appeal before the CIT(A). The assessee raised three fold submissions, namely ;

- i) The AO has inadvertently considered the opening balance in the advances
- ii) The actual advance taken within six year is Rs. 3,07,230/- only.
- iii) The AO has applied Section 36(1)(iii) in the hands of the company for this advance.

In other words, the AO sought to disallow interest expenses on this advance in the hands of the company.

- iv) The AO has overlooked the fact that actual amount of advance received during the year was adjusted in the following year against dividend and thus covered by Exception to Section 2(22)(e) and had ought to be not considered as deemed dividend.

5. Apart from the above proposition, the assessee has filed written submissions which has been extracted by the ld. First

Appellate Authority in paragraph No. 6.2 of the impugned order. The assessee has tabulated the advance outstanding as on 31.03.2012 and demonstrated that only Rs. 3,07,230/- was actually taken during this year.

6. The ld. First Appellate Authority though gone through the record carefully and propounded the fundamental aspects of the conditions required to be fulfilled for treating any advances as deemed dividend u/s 2(22)(e) of the Act but failed to consider the third fold of the contentions raised by the appellant. The ld. CIT(A) has held that loan and advances pertaining to earlier years cannot be added to the loans and advances received during this year for working out the alleged deemed dividend and accordingly, ld. First Appellate Authority has confirmed the addition of Rs. 3,07,230/-.

7. Shri Akshun Gupta, ld. counsel for the assessee while impugning the orders of Revenue Authorities contended that though AO has worked out the deemed dividend of Rs. 31,98,948/- but this was an amount which contains opening balance of earlier years. The ld. CIT(A) has scaled down this amount to Rs. 3,07,230/- which is the advance taken during this year. The amount excluded by the CIT(A) has not been challenged by the Revenue in further appeal, therefore, the subject matter of this appeal is, whether the sum of Rs. 3,07,230/- can be treated as a deemed dividend in the hands of

the assessee or not.

8. The ld. counsel, thereafter, took us through para 2.6.1 of the CIT(A)'s order and contended that assessee herself has not denied the applicability of Section 2(22)(e) of the Act. The conditions which are required to be fulfilled for attracting this Section are partly available. Therefore, he did not wish to argue on those issues. He straight away took us through sub-clause (3) of Section 2(22)(e) and contended that if any dividend is being paid by the company is set off by the company against whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e) to the extent to which it is set off, then it will not include in the alleged deemed dividend. He, thereafter, took us through paragraph number 6.2.5 on page 5 of the CIT(A)'s order and submitted that this advance requires to be exempted under sub-clause (iii) of Section 2(22). He read over this sub-para of the submissions made before the ld. First Appellate Authority. On the strength of the above, he submitted that addition confirmed by the CIT(A) be deleted.

9. On the other hand, ld. DR relied upon the orders of the Revenue Authorities.

10. We have duly considered the rival contentions and gone through the record carefully. Sub-clause (iii) of Section 2(22) has a direct bearing, therefore, it is imperative upon us to take note of this sub-clause which read as under :

“2.22 .....

But ‘dividend’ does not include –

i) x x x

ii) x x x

iii) Any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is set off. ”

11. In order to examine the claim of the assessee, we take note of the submissions made by her before the ld. First Appellate Authority which read as under :

*(5) M/s Sarasivati Agro Chemicals India Pvt. Ltd. has declared dividend ~@\Rs.4 per share and have deposited dividend distribution tax. The ledger accounts of the following years alongwith copies of challan of Dividend Tax and ITR are enclosed to evident facts about dividend and dividend distribution, tax. The advance of Rs.307230/- stands adjusted by the dividend amount of Rs. 1853320/-. Thus, here again treating this amount as deemed dividend shall be unlawful. Once again, double taxation cannot be there. Shareholder shall be paying tax on deemed dividend and company had paid Dividend Distribution Tax. In fact, exception (Hi) to section 2(22) is very clear in this regard. It states dividend does not include any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as dividend within the sub-clause (e), to the extent to which it is so set off.*

*(6) In view of the above submission, it is prayed the impugned addition of Rs.3198948/- may please be deleted.”*

12. On due consideration of the above facts that assessee though herself did not dispute about her shareholding more than 10% in M/s Saraswati Agro Chemicals (India) Pvt. Ltd., she has also not disputed that she took a loan of Rs. 3,07,230/- during this year and the CIT(A) has also confirmed the addition to this extent only. Her case is that the company has distributed the dividend @ Rs. 4/- per share and has deposited dividend distribution tax. This amount of Rs. 3,07,230/- has been adjusted with the dividend amount distributed by the company,

therefore, within the meaning of sub-clause (3) of Section 2(22) this adjusted amount is to be excluded from the deemed dividend under sub-clause (e) of Section 2(22). A perusal of the impugned order of Id. First Appellate Authority would indicate that this aspect has not been considered by the Id. CIT(A). We find force in the contention of Id. counsel for the assessee and allow the appeal of the assessee. The addition confirmed by the CIT(A) is deleted.

13. In the result, the appeal of the assessee is allowed.

Order pronounced on 19<sup>th</sup> November,2020.

Sd/-

**( N.K. SAINI)**  
**उपाध्यक्ष/ VICE PRESIDENT**

Sd/-

**( RAJPAL YADAV)**  
**उपाध्यक्ष/ VICE PRESIDENT**

**Dated : 19<sup>th</sup> November,2020.**

**“Poonam”**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar